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Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Little Isle IV, LLC, a Delaware Limited
Liability Company; Ula Makika, LLC, a
Delaware Limited Liability Company; and
Philip Kenner,

Plaintiffs,

v.

Kenneth A. Jowdy,

Defendant.

No. CV2009-00142

State Court No: CV2008-26850

**DEFENDANTS' NOTICE OF
REMOVAL TO UNITED STATES
DISTRICT COURT**

Pursuant to 28 U.S.C. §§ 1332, 1367, 1441 and 1446 and in accordance with LRCiv 3.7, Defendant Kenneth A. Jowdy hereby removes to the United States District Court for the District of Arizona the action filed in Arizona Superior Court, County of Maricopa, entitled *Little Isle Iv, LLC, et al., v. Kenneth A. Jowdy.*, Cause No. CV2008-026850 (the "Action"). The basis upon which the Action is removable is set forth below:

I. PROCEDURAL HISTORY

1. Plaintiffs initiated the Action by filing a Complaint (the "Complaint") on October 29, 2008, alleging claims for relief against Defendant Kenneth A. Jowdy ("Defendant"). A true and correct copy of the Complaint is attached hereto as Exhibit A. There are no other named defendants in the Action.

2. Defendant waived formal service of process on December 24, 2008.

1 **II. THE DISTRICT COURT HAS SUBJECT MATTER JURISDICTION OVER**
2 **THE ACTION BASED ON DIVERSITY OF CITIZENSHIP**

3 3. The State Court Action is removable to this Court because this Court has
4 subject matter jurisdiction over all of Plaintiffs' claims pursuant to 28 U.S.C. § 1332,
5 diversity jurisdiction.

6 4. The matter in controversy exceeds \$75,000. [*See, e.g.*, Compl. ¶¶ 25-28]

7 5. The Action is between citizens of different states.

8 6. Paragraphs 1-3 of the Complaint allege that Plaintiffs Little Isle IV, LLC,
9 and Ula Makika, LLC, are Delaware Corporations conducting business in Arizona; and
10 Plaintiff Philip Kenner is a resident of Arizona.

11 7. Paragraph 5 of the Complaint alleges: "Upon information and belief,
12 Defendant Kenneth Jowdy is a part-time resident of the States of Connecticut and Nevada,
13 and the country of Mexico." Kenneth Jowdy is a resident of Nevada.

14 8. To the extent necessary, this court has supplemental jurisdiction over
15 Plaintiffs' claims pursuant to 28 U.S.C. § 1367.

16 **III. TIMELINESS OF REMOVAL**

17 9. This Notice of Removal is timely under 28 U.S.C. § 1446(b) and Rule 6(a),
18 Fed. R. Civ. P., because it has been filed within thirty (30) days after Defendant waived
19 formal service of the Summons and Complaint.

20 **IV. VENUE**

21 10. Venue is proper pursuant to 28 U.S.C. § 1391(a) because the Complaint
22 alleges that the events giving rise to the claims therein occurred in the District of Arizona.
23 [*See, e.g.*, Compl. ¶ 7]

24 **V. CONSENT AND NOTICE**

25 11. Undersigned counsel represent all defendants, and all defendants consent to
26 removal of this Action.

1 12. Pursuant to 28 U.S.C. § 1446(d) and LRCiv 3.7, a copy of this Notice of
2 Removal will be promptly filed with the clerk of the Superior Court of Arizona, County of
3 Maricopa, and a copy is being served upon Plaintiffs.

4 **VI. PLEADINGS AND PROCESS**

5 13. In accordance with 28 U.S.C. § 1446(a), and with LRCiv 3.7(b), “a copy of
6 all process, pleadings, and orders served upon” defendant in the state court action includes
7 the Complaint (Exhibit A) and the Certificate of Compulsory Arbitration (Exhibit B).

8 **VII. NO ADMISSION OF FACT, LAW OR LIABILITY AND RESERVATION**
9 **OF DEFENSES**

10 No admission of fact, law or liability is intended by this Notice of Removal, and all
11 defenses, affirmative defenses and motions are hereby reserved.

12 January 23, 2009

PERKINS COIE BROWN & BAIN P.A.

14 By: s/Brian C. Lake

15 Brian C. Lake
16 2901 N. Central Avenue, Suite 2000
 Phoenix, Arizona 85012-2788

17 Attorneys for Defendant

CERTIFICATE OF SERVICE

☒ I hereby certify that on January 23, 2009, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Kevin R. Harper: krh@harperlawarizona.com

s/Sharon Neilson

69909-0001/LEGAL15187224.1

Index to Exhibits to Defendants' Notice of
Removal to United States District Court

- Exhibit A: Complaint (CV2008-026850, Maricopa County Superior Court)
- Exhibit B: Certificate of Compulsory Arbitration (CV2008-026850, Maricopa County Superior Court)

EXHIBIT A

1 Kevin R. Harper, State Bar No. 019118
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2 One North Central Avenue, Suite 1130
Phoenix, Arizona 85004
3 Tel. 602.256.6400
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4 krh@harperlawaarizona.com

5 *Attorney for Plaintiffs*

6 MARICOPA COUNTY SUPERIOR COURT

7 STATE OF ARIZONA

8 LITTLE ISLE IV, LLC, a Delaware Limited
9 Liability Company; ULA MAKIKA, LLC, a
Delaware Limited Liability Company; and
10 PHILIP A. KENNER,

11 Plaintiffs,

12 vs.

13 KENNETH A. JOWDY; JOHN AND JANE
DOES I-X; and BLACK AND WHITE
14 COMPANIES I-X,

15 Defendants.

No.

CV2008-026850

COMPLAINT

(Jury Trial Demanded)

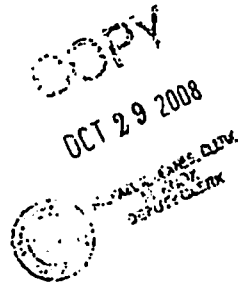
16 Plaintiffs Little Isle IV, LLC ("Little Isle IV"), Ula Makika, LLC ("Ula Makika"), and
17 Philip Kenner, by and through undersigned counsel, for their Complaint against Defendant
18 Kenneth Jowdy, allege as follows:

19 PARTIES AND JURISDICTION

20 1. Plaintiff Little Isle IV, LLC is a Delaware Corporation authorized to conduct
21 business and conducting business in Arizona.

22 2. Plaintiff Ula Makika, LLC is a Delaware Corporation authorized to conduct
23 business and conducting business in Arizona.

24 3. Plaintiff Phillip Kenner is, and at all times material hereto was, a resident of the
25 State of Arizona.
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1 12. On the occasion of each loan, Jowdy further promised to repay not only the
2 principle, but an additional amount as interest or profit. The amount of such return was not
3 specified on most occasions.

4 13. On the occasion of each loan request, Defendant instructed Plaintiff Kenner where
5 to deliver the funds. Except for the case payments directly from Kenner to Jowdy, the payments
6 were made via wire transactions from one of the Plaintiff entities to a recipient named by
7 Jowdy.

8 14. Upon information and belief, some of the wire recipients were creditors to whom
9 Jowdy owed money.

10 15. Upon information and belief, other wire recipients, including but not limited to
11 Baja Development Corp., Diamante Del Mar, LLC, and Propriedades DDM, are business
12 entities managed and/or controlled by Jowdy.

13 16. Upon information and belief, Jowdy has commingled and intermingled funds and
14 other assets of such entities with his personal funds and assets for his own convenience and to
15 evade payment of the companies' obligations.

16 17. Upon information and belief, Defendant has and continues to divert funds and
17 other assets of such companies to non-corporate uses.

18 18. Upon information and belief, said corporate entities have ignored corporate and
19 other formalities under the leadership of Defendant.

20 19. Upon information and belief, said corporate entities have been at all relevant times
21 substantially undercapitalized, without sufficient assets, and unable to perform their obligations,
22 including their obligations to Plaintiffs.

23 20. Upon information and belief, Defendant treated the assets of said corporate
24 entities as his own.
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1 21. Upon information and belief, Defendant diverted assets from said corporate
2 entities to himself and/or other entities to the detriment of creditors, including Plaintiffs.

3 22. Upon information and belief, Defendant contracted with Plaintiff via said
4 corporate entities with the intent to avoid personal liability for his wrongful acts.

5 23. Upon information and belief, Defendant in bad faith dominated and controlled
6 said corporate entities with regard to the acts alleged herein as his alter ego or business conduit,
7 sharing a unity of interest and ownership.

8 24. The corporate veil, or other protections against liability normally associated with
9 business and corporate entities, must be disregarded in order to avoid sanctioning a fraud against
10 Plaintiffs or otherwise promoting an injustice or inequity, and Defendant must be held
11 personally liable for damages suffered by Plaintiff.

12 25. As detailed below, approximately \$8,000,000 was paid by Plaintiffs to Defendant,
13 his creditors and/or companies controlled by Defendant between October 2004 and the present
14 date.

15 26. During the course of these transactions, Defendant did make limited payments to
16 Plaintiffs in order to further earn Plaintiffs' trust and convince Plaintiffs to provide additional
17 funds.

18 27. Defendant promised to repay Plaintiffs for any and all amounts advanced.

19 28. Despite Plaintiffs demands, Defendant has failed to repay any of the amounts
20 loaned to him.

21 29. Plaintiffs have been damaged as a direct and proximate result of Defendant's
22 actions and/or omissions in an amount to be proven at trial.

23 30. Plaintiffs are entitled to their attorneys' fees pursuant to A.R.S. § 12-341.01.
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The Little Isle IV Transactions

31. On or about October 29, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for the benefit of Defendant in the amount of \$15,000.

32. On or about November 1, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Aero Lease of Long Beach for the benefit of Defendant in the amount of \$26,469.

33. On or about November 1, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Bruce D. Greenberg, Inc. for the benefit of Defendant in the amount of \$11,000.

34. On or about November 2, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for the benefit of Defendant in the amount of \$250,000.

35. On or about November 3, 2004 Baja Development Corp. made a payment to Little Isle IV for the benefit of Defendant in the amount of \$52,469.

36. On or about November 24, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Casa de Caza for the benefit of Defendant in the amount of \$14,500.

37. On or about November 30, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for the benefit of Defendant in the amount of \$100,000.

38. On or about December 22, 2004, at Defendant's request and subject to Defendant's promise of repayment, Plaintiff Little Isle IV made a payment to Casa de Caza for the benefit of Defendant in the amount of \$15,500.

1 39. On or about January 7, 2005, at Defendant's request and subject to Defendant's
2 promise of repayment, Plaintiff Little Isle IV made a payment to Startime Management Group
3 for the benefit of Defendant in the amount of \$30,000.

4 40. On or about January 7, 2005, at Defendant's request and subject to Defendant's
5 promise of repayment, Plaintiff Little Isle IV made a payment to Jim Sheppard and Rodney
6 Dalton for the benefit of Defendant in the amount of \$750,000.

7 41. On or about January 10, 2005, at Defendant's request and subject to Defendant's
8 promise of repayment, Plaintiff Little Isle IV made a payment to Startime Management Group
9 for the benefit of Defendant in the amount of \$30,000.

10 42. On or about January 12, 2005, at Defendant's request and subject to Defendant's
11 promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for
12 the benefit of Defendant in the amount of \$20,000.

13 43. On or about January 18, 2005, at Defendant's request and subject to Defendant's
14 promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for
15 the benefit of Defendant in the amount of \$100,000.

16 44. On or about January 18, 2005, at Defendant's request and subject to Defendant's
17 promise of repayment, Plaintiff Little Isle IV made a payment to Diamante Del Mar, LLC for
18 the benefit of Defendant in the amount of \$250,000.

19 45. On or about February 1, 2005, at Defendant's request and subject to Defendant's
20 promise of repayment, Plaintiff Little Isle IV made a payment to Diamante Del Mar, LLC for
21 the benefit of Defendant in the amount of \$20,000.

22 46. On or about February 7, 2005, at Defendant's request and subject to Defendant's
23 promise of repayment, Plaintiff Little Isle IV made a payment to Diamante Del Mar, LLC for
24 the benefit of Defendant in the amount of \$300,000
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1 47. On or about February 25, 2005, at Defendant's request and subject to Defendant's
2 promise of repayment, Plaintiff Little Isle IV made a payment to Jim Sheppard and Rodney
3 Dalton for the benefit of Defendant in the amount of \$100,000.

4 48. On or about March 14, 2005, at Defendant's request and subject to Defendant's
5 promise of repayment, Plaintiff Little Isle IV made a payment to Diamante Del Mar, LLC for
6 the benefit of Defendant in the amount of \$100,000.

7 49. On or about March 15, 2005, at Defendant's request and subject to Defendant's
8 promise of repayment, Plaintiff Little Isle IV made a payment to Diamante Del Mar, LLC for
9 the benefit of Defendant in the amount of \$75,000.

10 50. On or about March 28, 2005 Diamante Del Mar, LLC made a payment to Plaintiff
11 Little Isle IV for the benefit of Defendant in the amount of \$50,000.

12 51. On or about April 12, 2005, at Defendant's request and subject to Defendant's
13 promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for
14 the benefit of Defendant in the amount of \$240,000.

15 52. On or about April 18, 2005, at Defendant's request and subject to Defendant's
16 promise of repayment, Plaintiff Little Isle IV made a payment to Insured Aircraft Title Service,
17 Inc. for the benefit of Defendant in the amount of \$200,000.

18 53. On or about April 21, 2005, at Defendant's request and subject to Defendant's
19 promise of repayment, Plaintiff Little Isle IV made a payment to Insured Aircraft Title Service,
20 Inc. for the benefit of Defendant in the amount of \$800,000.

21 54. On or about April 26, 2005 Insured Aircraft Title Service, Inc. made a payment to
22 Plaintiff Little Isle IV for the benefit of Defendant in the amount of \$200,000.

23 55. On or about April 26, 2005 Insured Aircraft Title Service, Inc. made a payment to
24 Plaintiff Little Isle IV for the benefit of Defendant in the amount of \$800,000.

1 56. On or about April 26, 2005, at Defendant's request and subject to Defendant's
2 promise of repayment, Plaintiff Little Isle IV made a payment to Mount Zion Commercial
3 Services for the benefit of Defendant in the amount of \$175,000.

4 57. On or about April 27, 2005, at Defendant's request and subject to Defendant's
5 promise of repayment, Plaintiff Little Isle IV made a payment to Mount Zion Commercial
6 Services for the benefit of Defendant in the amount of \$87,500.

7 58. On or about May 4, 2005, at Defendant's request and subject to Defendant's
8 promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for
9 the benefit of Defendant in the amount of \$75,000.

10 59. On or about May 4, 2005, at Defendant's request and subject to Defendant's
11 promise of repayment, Plaintiff Little Isle IV made a payment to Atillio Colli Villarino for the
12 benefit of Defendant in the amount of \$350,000.

13 60. On or about May 17, 2005, at Defendant's request and subject to Defendant's
14 promise of repayment, Plaintiff Little Isle IV made a payment to Atillio Colli Villarino for the
15 benefit of Defendant in the amount of \$350,000.

16 61. On or about May 18, 2005, at Defendant's request and subject to Defendant's
17 promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for
18 the benefit of Defendant in the amount of \$45,000.

19 62. On or about June 2, 2005, at Defendant's request and subject to Defendant's
20 promise of repayment, Plaintiff Little Isle IV made a payment to Metro Jet, LLC for the benefit
21 of Defendant in the amount of \$30,000.

22 63. On or about June 23, 2005, at Defendant's request and subject to Defendant's
23 promise of repayment, Plaintiff Little Isle IV made a payment to Startime Management Group
24 for the benefit of Defendant in the amount of \$40,000.

1 64. On or about June 27, 2005, at Defendant's request and subject to Defendant's
2 promise of repayment, Plaintiff Little Isle IV made a payment to LOR Management S.A. de
3 C.V. for the benefit of Defendant in the amount of \$40,000.

4 65. On or about July 19, 2005, at Defendant's request and subject to Defendant's
5 promise of repayment, Plaintiff Little Isle IV made a payment to Baja Development Corp. for
6 the benefit of Defendant in the amount of \$15,000.

7 66. On or about July 19, 2005, at Defendant's request and subject to Defendant's
8 promise of repayment, Plaintiff Little Isle IV made a payment to Propiedades DDM S. de R.L.
9 de C.V. for the benefit of Defendant in the amount of \$1,500,000.

10 67. From October 2004 through July 2005 Plaintiff Little Isle IV made a total of
11 \$6,154,969 in payments to Defendant, Defendant's creditors, and/or to Defendant's business
12 ventures and received \$1,102,469 in repayment.

13 **The Ula Makika Transactions**

14 68. On or about May 17, 2005, at Defendant's request and subject to Defendant's
15 promise of repayment, Plaintiff Ula Makika made a payment to Atillio Colli Villarino for the
16 benefit of Defendant in the amount of \$325,000.

17 69. On or about May 18, 2005, at Defendant's request and subject to Defendant's
18 promise of repayment, Plaintiff Ula Makika made a payment to Atillio Colli Villarino for the
19 benefit of Defendant in the amount of \$225,000.

20 70. On or about June 5, 2005, at Defendant's request and subject to Defendant's
21 promise of repayment, Plaintiff Ula Makika made a payment to Insured Aircraft Title Service,
22 Inc. for the benefit of Defendant in the amount of \$390,000.

23 71. On or about June 3, 2005 Propiedades DDM S. de R.L. de C.V. made a payment
24 to Plaintiff Ula Makika for the benefit of Defendant in the amount of \$400,000.
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1 72. On or about July 19, 2005, at Defendant's request and subject to Defendant's
2 promise of repayment, Plaintiff Ula Makika made a payment to Baja Development Corp. for the
3 benefit of Defendant in the amount of \$50,000.

4 73. On or about July 19, 2005, at Defendant's request and subject to Defendant's
5 promise of repayment, Plaintiff Ula Makika made a payment to Diamante Del Mar, LLC for the
6 benefit of Defendant in the amount of \$50,000.

7 74. On or about July 26, 2005, at Defendant's request and subject to Defendant's
8 promise of repayment, Plaintiff Ula Makika made a payment to Baja Development Corp. for the
9 benefit of Defendant in the amount of \$95,000.

10 75. On or about August 8, 2005 Baja Development Corp. made a payment to Plaintiff
11 Ula Makika for the benefit of Defendant in the amount of \$100,000.

12 76. On or about August 18, 2005, at Defendant's request and subject to Defendant's
13 promise of repayment, Plaintiff Ula Makika made a payment to Propiedades DDM S. de R.L. de
14 C.V. for the benefit of Defendant in the amount of \$40,000.

15 77. On or about August 26, 2005, at Defendant's request and subject to Defendant's
16 promise of repayment, Plaintiff Ula Makika made a payment to Propiedades DDM S. de R.L. de
17 C.V. for the benefit of Defendant in the amount of \$25,000.

18 78. On or about August 26, 2005, at Defendant's request and subject to Defendant's
19 promise of repayment, Plaintiff Ula Makika made a payment to Baja Development Corp. for the
20 benefit of Defendant in the amount of \$110,000.

21 79. In or about August 2005 Mark Thalmann made payment to Ula Makika for the
22 benefit of Defendant for the benefit of Defendant in the amount of \$223,000.

23 80. On or about September 12, 2005 Mark Thalmann made a payment to Ula Makika
24 for the benefit of Defendant in the amount of \$25,000.
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1 81. On or about September 15, 2005 Baja Development Corp. made a payment to Ula
2 Makika for the benefit of Defendant in the amount of \$25,000.

3 82. On or about September 23, 2005, at Defendant's request and subject to
4 Defendant's promise of repayment, Plaintiff Ula Makika made a payment to LOR Management
5 S.A. de C.V. for the benefit of Defendant in the amount of \$40,000.

6 83. On or about September 23, 2005, at Defendant's request and subject to
7 Defendant's promise of repayment, Plaintiff Ula Makika made a payment to Baja Development
8 Corp. for the benefit of Defendant in the amount of \$50,000.

9 84. On or about November 8, 2005, at Defendant's request and subject to Defendant's
10 promise of repayment, Plaintiff Ula Makika made a payment to Baja Development Corp. for the
11 benefit of Defendant in the amount of \$15,000.

12 85. On or about November 15, 2005, at Defendant's request and subject to
13 Defendant's promise of repayment, Plaintiff Ula Makika made a payment to Diamante Del Mar,
14 LLC for the benefit of Defendant in the amount of \$40,000.

15 86. On or about November 21, 2005 Diamante Del Mar, LLC made a payment to
16 Plaintiff Ula Makika for the benefit of Defendant in the amount of \$40,000.

17 87. On or about December 9, 2005, at Defendant's request and subject to Defendant's
18 promise of repayment, Plaintiff Ula Makika made a payment to Diamante Air, LLC for the
19 benefit of Defendant in the amount of \$10,000.

20 88. On or about February 3, 2006, at Defendant's request and subject to Defendant's
21 promise of repayment, Plaintiff Ula Makika made a payment to Baja Development Corp. for the
22 benefit of Defendant in the amount of \$20,000.

23 89. On or about February 14, 2006 Baja Development Corp. made a payment to
24 Plaintiff Ula Makika for the benefit of Defendant in the amount of \$50,000.
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1 90. On or about February 24, 2006 Baja Development Corp. made a payment to
2 Plaintiff Ula Makika for the benefit of Defendant in the amount of \$50,000.

3 91. On or about March 2, 2006 Baja Development Corp. made a payment to Plaintiff
4 Ula Makika for the benefit of Defendant in the amount of \$70,000.

5 92. On or about March 13, 2006 Baja Development Corp. made a payment to Plaintiff
6 Ula Makika for the benefit of Defendant in the amount of \$20,000.

7 93. On or about March 14, 2006 Baja Development Corp. made a payment to Plaintiff
8 Ula Makika for the benefit of Defendant in the amount of \$30,000.

9 94. On or about March 24, 2006 Baja Development Corp. made a payment to Plaintiff
10 Ula Makika for the benefit of Defendant in the amount of \$90,000.

11 95. From May 2005 through February 2006 Plaintiff Ula Makika made a total of
12 \$1,485,000 in payments to Defendant, Defendant's creditors, and/or to Defendant's business
13 ventures and received \$1,123,000 in repayment.

14 **The Philip Kenner Transactions**

15 96. In or about October 2002, Jowdy promised to pay Kenner \$500,000 as an
16 incentive for Kenner to leave his current employer and undertake various investment and
17 business opportunities together with Jowdy.

18 97. Kenner accepted Jowdy's offer, left his employment, and suffered significant
19 losses as a result, but Jowdy has failed and refused to remit the promised payment.

20 98. From October 2004 to the present, Plaintiff Phillip Kenner has loaned Defendant
21 approximately \$400,000 in various cash payments.

22 99. Despite Plaintiff Kenner's demands, Defendant has failed to pay any of the
23 amounts owed to Kenner.
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COUNT ONE
(Breach of Contract)

100. Plaintiffs incorporate all foregoing allegations as if fully set forth herein.

101. One or more valid contracts existed between Plaintiffs and Defendant.

102. Defendant breached the terms of the contracts with Plaintiffs by failing and refusing to pay amounts owed in a reasonable and timely manner.

103. Plaintiffs have performed all conditions, covenants, and promises required to be performed by them in accordance with the terms and conditions of the contracts.

104. Plaintiffs have sustained damages in an amount to be proven at trial.

105. During the course of the parties' relationship Jowdy deliberately prevented Plaintiffs, by his statements and actions, from discovering the Defendant's contractual breaches.

106. Because of Plaintiffs' reasonable reliance upon Defendant's representations and actions, Plaintiffs did not discover the contractual breaches until after November 2006.

COUNT TWO
(Negligent and Intentional Misrepresentation)

107. Plaintiffs incorporate all foregoing allegations as if fully set forth herein.

108. Defendant made the statements, misrepresentations, and omissions set forth above to Plaintiffs with the intent that they rely upon them and Plaintiffs did so rely. Plaintiffs would not have consummated the transactions but for the misrepresentations and omissions.

109. Defendant either knew that his representations were false or consciously and willfully disregarded that the representations were false. Alternatively, Defendant failed to exercise reasonable care and competence in communicating accurate or truthful statements to Plaintiffs.

110. The representations were material to Plaintiffs, who relied upon them to their detriment. Such reliance was reasonable and justified. Plaintiffs did not know the

1 representations were false and relied upon Defendant to make accurate representations and
2 disclosures, as required by Arizona law.

3 111. Plaintiffs have been consequently and proximately injured as a result of the
4 misrepresentations and omissions in an amount to be proven at trial.

5 112. To the extent Defendant's actions are shown to be intentional, they were carried
6 out intentionally, maliciously, and with a conscious disregard for the interests of Plaintiffs, and
7 specifically to obtain a pecuniary gain and, as such, have exposed Defendant to liability for
8 exemplary and punitive damages.

9 113. During the course of the parties' relationship Jowdy deliberately prevented
10 Plaintiffs, by his statements and actions, from discovering the fraudulent nature of Defendant's
11 representations.

12 114. Because of Plaintiffs' reasonable reliance upon Defendant's representations and
13 actions, Plaintiffs did not discover the fraudulent nature of those representations until after
14 November 2006.

15 **COUNT THREE**
16 **(Breach of Fiduciary Duty)**

17 115. Plaintiffs incorporate all foregoing allegations as if fully set forth herein.

18 116. Defendant had a duty to act for the benefit of Plaintiffs, particularly with regard to
19 the use and management of the funds paid to and/or on behalf of Defendant, which funds
20 Defendant promised to repay in a timely manner.

21 117. Defendant breached his duty by failing to repay Plaintiffs the money invested in
22 Defendant's business ventures.

23 118. Plaintiffs have sustained damages in an amount to be proven at trial.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff demands and prays for judgment as follows:

26 (A) Awarding judgment in Plaintiffs' favor and against Defendant;

1 (B) Awarding Plaintiffs all of their damages as proven at trial, including but not
2 limited to contract damages, compensatory damages, as well as punitive or exemplary damages
3 as may be appropriate;

4 (C) Awarding Plaintiffs their costs of suit and reasonable attorneys' fees pursuant to
5 the terms of the contracts and A.R.S. § 12-341.01;

6 (D) Awarding Plaintiffs such further relief as this Court deems just and proper.
7

8 RESPECTFULLY SUBMITTED this 28 day of October, 2008.
9

10 HARPER LAW PLC

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12
13 By  _____
14 Kevin R. Harper
15 Attorney for Plaintiff
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EXHIBIT B

MICHAEL R. JEANES, CLERK
BY *M. Knox* DEP
FILED

08 OCT 29 PM 12:45

1 Kevin R. Harper, State Bar No. 019118
2 **HARPER LAW PLC**
3 One North Central Avenue, Suite 1130
4 Phoenix, Arizona 85004
5 Tel. 602.256.6400
6 Fax 602.256.6418
7 *krh@harperlawaarizona.com*

8 *Attorney for Plaintiffs*

MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

9 LITTLE ISLE IV, LLC, a Delaware Limited
10 Liability Company; ULA MAKIKA, LLC, a
11 Delaware Limited Liability Company; and
12 PHILIP A. KENNER,

Plaintiffs,

vs.

13 KENNETH A. JOWDY; JOHN AND JANE
14 DOES I-X; and BLACK AND WHITE
15 COMPANIES I-X,

Defendants.

No. **CV 2008-026850**

**CERTIFICATE OF COMPULSORY
ARBITRATION**

16 The undersigned certifies that the largest amount sought by Plaintiffs, excluding interest,
17 attorneys' fees and costs, does exceed the limits set by Local Rule 3.10 for compulsory
18 arbitration. This case is not subject to the Uniform Rules of Procedure for Arbitration.

19 DATED this 22 day of October 2008.

HARPER LAW PLC

By

[Signature]
Kevin R. Harper
Attorney for Plaintiffs

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS	DEFENDANTS
(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number)	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> PTF <input type="checkbox"/> DEF
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 1 Citizen of This State
<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 2 Citizen of Another State
<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country
	<input type="checkbox"/> 4 Incorporated <i>or</i> Principal Place of Business In This State
	<input type="checkbox"/> 5 Incorporated <i>and</i> Principal Place of Business In Another State
	<input type="checkbox"/> 6 Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	PRISONER PETITIONS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)	Appeal to District Judge from Magistrate Judgment
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court
<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
<input type="checkbox"/> 7	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
	Brief description of cause:

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY			
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE
			MAG. JUDGE

SUPPLEMENTAL CIVIL COVER SHEET FOR CASES REMOVED FROM ANOTHER JURISDICTION

This form must be attached to the Civil Cover Sheet at the time
the case is filed in the United States District Clerk's Office.

Additional sheets may be used as necessary.

1. **Style of the Case:** No. CIV2009-00142, State Court No. CV2008-026850, Little Isle IV, LLC, a Delaware Limited Liability Company; Ula Makika, LLC, a Delaware Limited Liability Company; and Philip A. Kenner v. Kenneth A. Jowdy

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
Little Isle IV, LLC, Ula Makika, LLC, and Philip A. Kenner	Plaintiff	Kevin R. Harper (#019118) Haper Law PLC One North Central Avenue Suite 1130 Phoenix, Arizona 85004 (602) 256-6400
Kenneth A. Jowdy	Defendant	Brian C. Lake (# 020543) James A. Ahlers (#026660) Perkins Coie Brown & Bain, PA 2901 N. Central Ave., Suite 2000 Phoenix, AZ 85012 (602) 351-8000

2. **Jury Demand:**

Was a Jury Demand made in another jurisdiction? Yes No

If "Yes," by which party and on what date?

Plaintiff 10/29/08

3. **Answer:**

Was an Answer made in another jurisdiction? Yes No

If "yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

<u>Party</u>	<u>Date Served</u>	<u>Method of Service</u>
Defendant	12/24/08	Signed Waiver of Service

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>
None	

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>
None	

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
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Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.

Pursuant to the Unopposed Motion for Extension filed herewith, the State Court file will be provided in accordance with the terms of the motion.

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